I. GENERAL

A. AUTHORITY

This Zoning By-Law is adopted in accordance with the provisions of the General Laws, Chapter 40A.

B. PURPOSE

The purpose of this By-Law is to establish such regulations for the uses of premises, as will protect and promote life, health, safety, morals, convenience and general welfare of the townspeople. In their interpretation and application, the provisions of this By-Law shall be held to be minimum requirements, adopted for the promotion of the public health, safety, comfort, convenience or general welfare.

It shall also be the purpose of this By-Law to enhance the public welfare by increasing the supply of affordable housing in the Town of Framingham. To accomplish this purpose, all applicants for development or re-development (as defined in O.2.b.) of ten (10) or more dwelling units shall be required to provide or to enable the provision of Affordable Housing Units to home buyers or renters in accordance with requirements and standards set forth in this By-Law and the Affordable Housing Regulations of the Planning Board. Such development of housing, including those proposed under a special permit process pursuant to G. L. 40A sec. 9, and those proposed under the Subdivision Control Law G. L. c. 41 sec. 81K to 81GG inclusive, including divisions of land that do not require subdivision approval, shall require a special permit from the Planning Board, as set forth under Section IV.O. Affordable Housing.

Any new Housing Plan/Policy or change to an existing Plan/Policy shall be submitted to the Town Meeting for approval by a two-thirds vote of Town Meeting.

It is not intended by this By-Law to repeal, abrogate, annul or in any way to impair or interfere with any existing provisions of law or By-Law, or with any rules, regulations or permits previously adopted or issued or which shall be adopted or issued pursuant to law relating to the use of buildings or premises; provided, however, that where this By-Law imposes a greater restriction upon the use of buildings or premises than is imposed or required by such existing provision of law or By-Law or by such rules or regulations or permits, the provisions of this By-Law shall control.

C. BASIC REQUIREMENTS

Except as hereinafter specified in Part I.D., no building, structure, or land shall be used and no building or part thereof or other structure shall be erected, raised, reconstructed, extended, enlarged, or altered, except in conformity with the regulations herein specified for the district in which it is located, except that nothing in this By-Law shall affect the existing use of any building or lot.

D. NON-CONFORMING BUILDINGS, STRUCTURE, USES AND LOTS

1. Applicability

- **a.** The provisions of this By-Law shall not apply to any building, structure or use lawfully in existence or lawfully begun prior to March 15, 1939, but shall apply to any alteration of a building to provide for its use for a purpose, or in a manner, substantially different from the use to which it was put before the alteration.
- **b.** The provisions of any amendment to this By-Law shall not apply to any lawful, pre-existing, nonconforming building, structure or use, lawfully in existence or lawfully begun prior to the effective date of such amendment, or to a Special Permit, building permit, or variance issued before the first publication of notice of the public hearing on such amendment, but shall apply to any alteration of a building to provide for its use for a purpose, or in a manner, substantially different from the use to which it was put before the alteration.
- 2. Nonconforming A lawful pre-existing building, structure, vacant lot, or use of buildings or land that does not conform to the zoning regulations for the district in which it is located, but did conform at the time it was built or established. The grant or existence of a variance or special permit for the maintenance of any non-compliance with this By-Law does not make such non-compliance a non-conformity protected under this Section I.D.

3. Purpose and Intent

It is the intent of this By-Law to ensure that nonconforming uses will ultimately comply with the use requirements of the Zoning By-Law.

4. Floor Area Ratio

The Zoning Board of Appeals shall not grant a Special Permit for an increase in Floor Area Ratio greater than what is allowed in the district in which it is located.

5. Change to Nonconforming Building or Structure

- **a.** The Building Commissioner may grant a building permit to allow an expansion or alteration of a lawful, pre-existing nonconforming residential single or two family building or structure where the Commissioner finds that the extension or alteration does not increase the nonconforming nature of the building or structure.
- **b.** The Zoning Board of Appeals may authorize, by a Finding under G. L. c. 40A, § 6, an alteration, extension, or structural change to a lawful pre-existing nonconforming residential single or two-family building or structure provided such extension or alteration is less detrimental to the neighborhood than the existing nonconformity.
- c. The Zoning Board of Appeals may grant a Special Permit for an extension or alteration of a lawful, pre-existing, nonconforming residential single or two family building or structure, provided that the Board determines that the requirements set forth in Section V.E.3.a. of the Zoning By-Law are met and that such extension or alteration is less detrimental to the neighborhood than the existing nonconformity.

6. Change of Use

Except in residential districts, the Zoning Board of Appeals may grant a Special Permit for a change of a lawful, preexisting, nonconforming use, provided the Board makes the findings set forth in Section V.E.3.a. of the Zoning By-Law and the following mandatory findings:

- **a.** Said change in use is less detrimental to the abutting properties, ways, and the neighborhood than the existing nonconformity; and
- **b.** Sufficient mitigating measures will be implemented as a requirement of the Special Permit to compensate for any adverse effects noted in reports from town boards; agencies: reports from consultants; and information acquired from public hearings.

7. Discontinuance or Abandonment of a Nonconforming Use or Structure

Any use or structure loses its protection as nonconforming when the non-conformity is abandoned.

- **a.** Any nonconforming use or structure that is made conforming as to any aspect has abandoned the nonconforming protection as to that aspect.
- **b.** Any nonconforming use or structure that is not used for any purpose for two years has been abandoned for the purposes of this subsection.
- **c.** Evidence of discontinuance or abandonment may include, but shall not be limited to, one or more of the following, which shall not be conclusive of discontinuance or abandonment:
 - (1) Removal of customary equipment or supplies for the operation of the use.
 - (2) Discontinuance of electric, gas or other utility services.
 - (3) The passage of two years after issuance of a notice of an unsafe structure by the building inspector, without such condition having been repaired.
 - (4) Failure to renew any certificate or license that is required for the conduct of business.

8. Destruction or Damage

A lawful, pre-existing, nonconforming single or two family building, structure or use, which has been destroyed or damaged by fire or other casualty may be re-established, restored or rebuilt within two years of occurrence of the damage or destruction. Re-establishment, restoration or rebuilding shall be permitted provided that there is no increase in the

degree of the non-conformity, and the reconstruction conforms to the current requirements of the By-Law to the maximum extent practicable.

9. Unsafe Buildings

Nothing in this By-Law shall prevent the strengthening or restoring to a safe condition of any building, or part thereof, declared unsafe by the Building Commissioner.

10. Severability

The provisions of this Section I.D of the By-Law are severable. Any determination that a particular provision or set of provisions in this Section I.D are invalid or unenforceable shall not render ineffective, unenforceable, or inapplicable the remainder of this Section I.D.

E. DEFINITIONS

1. Terms Defined

For the purpose of this By-Law, the following terms shall have the meanings given in the following clauses, unless a contrary intention clearly appears:

Accessory Use: A subordinate use, building or structure clearly incidental to and customarily found in connection with the principal use, building or structure and which is located on the same lot with the main use, building or structure. A use or activity not prescribed or permitted in the zoning district shall be expressly prohibited.

Amusement Park: An outdoor amusement facility of a permanent nature, including carnival or midway, with any or all of the following: rides, water slides, concession stands, and games of chance.

Applicant: The owner(s) of land and such duly authorized agent(s), representative(s), assign(s) or attorney(s). The owner(s) of land must be included as an applicant to an application, even if not the proponent. Persons or entities other than the owner may also serve as co-applicants in addition to the owner(s), however, in each instance, such person or entity shall file with the appropriate application authority, sufficient written evidence of authority to act by or on behalf of the owner(s).

Assisted Living Housing: Housing units and associated facilities designed for the elderly who require daily assistance but who do not require nursing home care. An Assisted Living Housing Unit consists of the same characteristics as a Congregate Living Housing Unit. Associated facilities typically provide additional services beyond Congregate Housing, including daily meals and personal services, medical monitoring and supervision. Assisted Living shall refer to certified Assisted Living Residences only, as defined and certified under MGL Ch. 354 of the Acts of 1994, and as regulated under EOEA 651 CMR 12.00.

Automatic Carwash: Any facility, its structures, accessory uses, paved areas or grounds used wholly or partly to wash and clean the exterior of passenger automobiles, vans, pick-up and panel trucks using conveyors to move the vehicle or equipment that moves over or around the vehicle or other automated equipment intended to mechanically wash such vehicles and which is open to the public.

Bed and Breakfast: A private owner-occupied single-family residence with guestrooms for rent.

Building: Any structure or portion thereof, either temporary or permanent, having a roof or other covering, and designed or used for the shelter or enclosure of any person, animal, process, equipment, goods or materials of any kind or nature.

Change in Use: A change in part or all of an existing structure from one use category or purpose to another use category or purpose. In a mixed or multi-use facility, an exchange or rearrangement of principal use categories or components shall not be construed as a change in use unless the net change in any of the factors in the Table of Off-Street Parking Regulations, Subsection IV.B.1 (a), requires an addition of 10 or more parking spaces to the amount required by this By-Law prior to the change in use. The calculation of change in use of gross floor area shall be determined by the Building Commissioner based on the aggregate of all changes in use undertaken within a consecutive three year term.

Congregate Living Housing: Housing units and associated facilities designed for elderly occupants who do not require constant supervision. A Congregate Living Housing Unit consists of a room or group of rooms for one or more persons with provisions for living and sleeping for the exclusive use of the individual or household unit. The Congregate Living Housing unit may provide exclusive cooking and sanitary facilities. Associated or shared facilities may include common

dining facilities with limited meals, housekeeping services and common space for indoor and outdoor social, educational and recreational activities.

Cultural Center: A theater, museum, or gallery or any combination thereof.

Development: Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

Enlargement: An increase in the size of an existing structure.

Extension: An increase in the amount of existing floor area within an existing building.

Fast Food Establishment: A food and beverage serving facility which generally serves ready-to-eat foods and beverages in disposable containers over a general service counter that customer carry to the restaurant's seating facilities or off premises.

Fixture: The assembly that holds the lamp (bulb) in a lighting system. It includes the elements designed to give light output control, such as a reflector (mirror) or refractor (lens), the ballast, housing, and the attachment parts.

Floor Area Ratio (FAR): The ratio of the gross floor area of the building or group of buildings on a lot, including accessory buildings, to the lot area. Any land within the lot area which is located in another zoning district in which the principal use of the lot is not permitted shall be subtracted from the lot area for the purposes of calculating the Floor Area Ratio. Any land within the lot area located beneath a river, or beneath a brook, stream or creek wider than 10 feet, the boundary of which is the upper boundary of the Bank, shall be subtracted from the lot area for the purposes of calculating the Floor Area Ratio.

Geriatric Hospital Facility: An Accredited geriatric hospital facility, including acute care facilities, extended care facilities, and continuing care facilities.

Glare: Light emitted from a luminaire with intensity great enough to produce annoyance, discomfort or visual impairment.

Gross Floor Area: The sum of the area of all stories of a building measured from the exterior faces of the exterior walls or from the centerline of walls separating two buildings, including any floor area below grade when used for residential, office, business, storage, industrial, or other purposes, but excluding any area used exclusively for heating, air conditioning or other mechanical equipment, and excluding floor area intended or designed for accessory off-street parking.

Ground Coverage: Land occupied by structures, storage spaces, patios, parking areas, roadways and driveways, and other paved or enclosed areas.

Home occupation: An activity customarily conducted by the residents of a dwelling unit, inside the principal dwelling unit or building accessory thereto, requiring only home equipment, including but not limited to type writers and computers. The term "home occupation" shall include but is not limited to the studio of an artist, musician, or photographer; the office of a sales or manufacturer's representative; secretarial or computer-related activities; tailoring; millinery; handicrafts; and small group instruction or tutoring. Such use shall be allowed provided no retail or wholesale merchandise transactions are conducted on the premises, with the exception of handicrafts, art work or clothing produced entirely on the premises. The term "home occupation" shall not be interpreted to include the following: clothing rental, barber shop, hairdresser, restaurant, television repair, real estate broker, orchestra or instrumental group, antique shop, animal hospital, and other similar uses. The term "merchandise transaction" shall not include transactions made solely by mail or telephone, but shall include any pick-up or delivery of goods bought or sold as part of the home occupation.

Home Office: An office within the dwelling unit, or accessory building thereto, of a resident physician, dentist, lawyer, architect, registered engineer, accountant, psychologist, or other member of a recognized profession. A "recognized profession" is one in which specialized services are provided to clients and which is recognized by a board or agency which grants a license, certification, or registration.

Hospice Facilities: Facilities designed to provide for the physical and emotional needs of the terminally ill.

Human Habitation: The use of a building for living purposes including working, sleeping, eating, cooking or recreation, or a combination thereof, but excluding use for storage only.

Independent Living Housing: Housing units and associated facilities designed for the elderly who are self sufficient and require no on-site personal or health care services. An Independent Living Housing unit consists of a room or group of rooms designed or intended to provide a habitable unit for one or more persons with provisions for cooking, living, sanitation and sleeping for the exclusive use of the household unit. Associated facilities may include substantial common and socializing areas and other amenities.

Lamp - The component of a luminaire that produces the actual light.

Landscaped Open Space Surface Ratio (also, Landscaped Surface Ratio or LSR): The ratio between (1) the area of a parcel devoted to pervious landscaping or natural vegetated areas and (2) the total area of the parcel. Both components of this ratio shall exclude any wetland resource area, as defined in M.G.L. Ch. 131, Sec. 40, except for wetland areas that are located within one hundred (100) feet of an upland area adjoining a developed area of the project.

Light Trespass - The shining of direct light produced by a luminaire beyond boundaries of the lot on which it is located.

Lot: A parcel of land, with definite boundaries ascertainable by recorded deed or recorded plan and used or set aside and available for use as the site of one or more buildings or for any other definite purpose, in one ownership and not divided by a street or public way.

Lot Area: The horizontal area of the lot including land over which easements have been granted, but exclusive of any area within the limits of a street or recorded public or private way, even if fee to such street is in the owner of the lot.

Lot Coverage: The area of a lot lying within the outside lines of exterior walls of all buildings on the lot, including the area of any appurtenance; or, if indicated by the context, the ratio of said area to the total area of the lot, expressed as a percentage.

Lot Line: A line dividing a lot from a street or from a contiguous lot.

Lot Line, Front: The property line adjacent to (a) a public way or a way which the Town Clerk certifies is maintained and used as a public way, or (b) a fully constructed way shown on a plan theretofore approved and endorsed in accordance with the subdivision control law, or (c) a way in existence when the subdivision control law became effective in the Town of Framingham, having, in the opinion of the Planning Board, sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon or served thereby and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon. Frontage shall provide both rights of access and potential vehicular access across that lot line to a potential building site. Frontage shall be measured in a single contiguous, uninterrupted line along a street or streets.

Lot Line, Side: Any lot line that is not a front lot line.

Lumen - A measure of light energy generated by a light source. One footcandle is one lumen per square foot. For purposes of this By-Law, the lumen output shall be the initial lumen output of a lamp, as rated by the manufacturer.

Luminaire - The complete lighting unit, including the lamp, the fixture, and other parts.

Mixed Use: A building containing residential use on any floor above the ground floor of a building combined with an allowed non-residential use or uses on the ground floor and other floors of a building.

Mixed Use Complex: A parcel or contiguous parcels (whether or not in common ownership) of at least five (5) acres with adaptive reuse of historic manufacturing structures for multifamily residential and allowed non-residential uses within the existing historic structures. Such Mixed Use Complex shall have shared parking and integrated facilities and infrastructure. Residential and non-residential uses may be in the same or separate buildings, provided however that neither the total residential uses nor the total non-residential uses shall exceed 80 percent of the gross floor area of the buildings in the Mixed-Use Complex, excluding parking facilities.

Multi-family Dwelling: A dwelling containing more than two dwelling units.

Municipal Services: Public services and infrastructure furnished by the Town, including but not limited to, police, fire, schools, public works, inspectional services, finance, water systems, sanitary sewerage systems, communication services, and fire alarm systems.

Nursing Care Facilities: Intermediate and skilled care nursing facilities designed to provide an intensive level of nursing and medical care for patients.

Open Space, Landscaped: The part or parts of a lot designed to improve the visual environment and to provide areas for passive outdoor recreation, including the preservation of existing natural site features and/or the planting or placement of such elements as grass, flowers, shrubs, trees, or permeable ground cover. Such space shall not include lot area used for parking or access drives or any impermeable paved areas.

Open Space, Usable: The part or parts of a lot designed and developed for outdoor use by the occupants of the lot for such recreational uses as swimming pools and tennis courts, vegetable gardens, animal enclosures, or patios. Such space may include landscaped open space and impermeable paved areas, but shall exclude areas used for parking or access drives or accessory structures.

Outdoor Recreational Facility: Parks, picnic areas, play fields and playgrounds; outdoor swimming pools and tennis courts; golf courses and country clubs on parcels of at least 50 acres; boat launching ramps; riding trails; and paths or trails for cycling, hiking, jogging, skiing, etc. Specifically excluded are firing ranges and miniature golf courses.

Principal Use: The primary or main use of land, building or structure, as distinguished from an accessory use, building or structure. A use or activity not prescribed or permitted in the zoning district shall be expressly prohibited.

Self-service Carwash: Any facility with two (2) or more bays, its structures, accessory uses, paved areas or grounds used wholly or partly to wash, clean and dry the exterior of passenger automobiles, vans, pick-up and panel trucks using hand held equipment and which is open to the public.

Setback: The distance between a front or side lot line and the line of a building or projection thereof, measured on a line perpendicular to the lot line.

Story: The portion of a building which is between one floor level and the next higher floor level or the roof. If a mezzanine floor area exceeds one-third of the area of the floor immediately below, it shall be deemed to be a story. Any floor area below finished grade shall be deemed to be a story when its ceiling is four feet six inches or more above grade. Any attic shall be deemed to be a story if more than one-half the floor area has a clear height of seven feet or more.

Structure: Any combination of materials assembled at a fixed location providing support or shelter, such as a building, framework, tent, shed, or mast for radio antennas, but excluding sidewalks and paved areas on streets, driveways, parking areas, and patios.

Substantial Alteration: An alteration or improvement of a structure or group of structures under one ownership on the same lot or contiguous lots which results in an increase in gross floor area in excess of either 10 per cent of existing gross floor area or 5,000 square feet, whichever is the lesser amount, or which requires an addition of 10 or more parking spaces to the amount required by this By-Law prior to the alteration. The calculation of a substantial alteration shall be determined by the Building Commissioner based on the aggregate of all repairs, improvements, extensions or enlargements undertaken within a consecutive three year term.

Substantial Improvement: An alteration or improvement of a building, the cost of which, including all materials and labor, based on documented estimates or construction costs submitted by the applicant, equals or exceeds 40 per cent of the full value assessment of the building. The calculation of a substantial improvement shall be determined by the Building Commissioner based on the aggregate of all repairs, improvements, extensions or enlargements undertaken within a consecutive three year term.

2. Terms Not Defined

Terms not defined in this Section or elsewhere in this By-Law but defined in the State Building Code or in the Massachusetts General Laws shall have the meanings given therein.

F. WIRELESS COMMUNICATIONS FACILITIES TEMPORARY MORATORIUM

1. Purpose and Intent

The increasing use of business and personal devices relying on personal wireless service facilities, often referred to as wireless communications facilities, particularly recent changes and trends in the wireless communications industry, such as the advent of 3G and 4G networks, new technologies for wireless communications facilities, and other advances, have generated a significant number of applications for the placement, construction and modification of such facilities in the Town in recent months. Given the rapidly evolving nature of the underlying technology, the Town needs time to review and analyze these changes, advances, and trends in a meaningful and thoughtful way and the range of land use and regulatory issues raised by such facilities.

Section IV.L of the Zoning By-law, which governs Wireless Communications Facilities, was enacted in 1997, soon after the enactment of the federal Telecommunications Act in 1996. Since then, the technology for wireless communications, and wireless communications facilities, has changed and advanced at a rapid pace. Recently, it has become clear that the provisions of Section IV.L need to be re-examined in a comprehensive manner to address these advances. The Board of Selectmen, in recognition of this, is committed to establishing a committee with the necessary expertise to analyze the current and projected future technology and to make comprehensive recommendations for regulating these facilities in compliance with the Telecommunications Act.

By enacting a temporary, six month moratorium, the Town will have time to develop reasonable regulations regarding the placement, construction and modification of wireless communications facilities. The Town fully recognizes its responsibilities under the Telecommunications Act of 1996. Full and impartial compliance with the Act is best accomplished through thoughtful analysis and subsequent regulatory guidance. Therefore, in reliance on the Town's authority under General Laws chapter 40A and the Massachusetts State Constitution, and in keeping with the Town's responsibilities to protect public health, welfare, and safety, the Town hereby adopts this temporary moratorium.

2. Temporary Moratorium

Notwithstanding any other provisions of this Zoning By-law to the contrary, for a period of six months from the effective date of this amendment, no building permit, special permit, or variance shall be issued for the construction, placement, installation, modification, alteration, or use of any building, structure, or land within the town for the purpose of a wireless communications facility, as defined in Section IV.L this By-law, within the town. Amateur radio towers, to the extent they are exempt from Zoning By-law requirements under General Laws chapter 40A §3, and wireless communication facilities for use by police, fire, or other emergency services are exempt from this moratorium.